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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/661,838      | 09/15/2003  | Fred Rascoe          | 1339.17             | 8552             |
| 7590            | 10/04/2004  |                      |                     |                  |
|                 |             |                      | EXAMINER            |                  |
|                 |             |                      | PATEL, NIHIL B      |                  |
|                 |             |                      | ART UNIT            | PAPER NUMBER     |
|                 |             |                      | 3743                |                  |

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/661,838             | RASCOE ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Nihir Patel            | 3743                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the first stage regulator and that the regulator is operative to reduce air pressure to approximately 50 to 150 psi, instead 50 to 120 psi is recited) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chua et al. US Patent No. 5,626,131 in view of Zdrojkowski et al. US Patent No. 5,803,065 and Taba et al. US Patent No. 5,746,198. Chua discloses the applicant's invention as claimed with the exception of providing a face mask for receiving air from the source and a stage regulator that is disposed between the source of compressed air and the demand valve and operative to reduce the pressure of the compressed air to approximately 50 to 120 psi. Zdrojkowski discloses a breathing gas delivery method and apparatus that does provide a face mask for receiving air from the source (see figure 1) and Taba discloses a valve for a first stage regulator having an encapsulated head that does provide a stage regulator that is disposed between the source of compressed air and the

demand valve and operative to reduce the pressure of the compressed air to approximately 50 to 120 psi. Therefore it would have been obvious to modify Chua's invention by providing a facemask for receiving air from source in order to prevent air from escaping and to provide a first stage regulator that is disposed between the source of compressed air and the demand valve and operative to reduce the pressure of the compressed air to approximately 50 to 120 psi in order to proper amount of air.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chua et al. US Patent No. 5,626,131 in view of Power US Patent No. 5,673,689. Chua discloses the applicant's invention as claimed with the exception of providing a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor.

Power discloses a piston based ventilator that does provide a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor (see figure 2). Therefore it would be obvious to modify Chua's invention by providing a demand valve and an exhalation valve that comprises a piston linearly movable by means of a motor in order for the valve to function more quickly and prevent leakage.

Claims 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chua US Patent No. 5,626,131 in view of Servidio et al. US Patent No. 5,927,274. Referring to claim 3, Chua discloses the applicant's invention as claimed with the exception of providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the mask.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the

mask (referring to figures 6 through 8; number 160 represents the piston and the section located at the distal end of the piston and close to passage way represents the seat pad; and the section located at number 70 represents the valve seat). Therefore it would be obvious to modify Chua's invention by providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air to the mask in order to prevent leakage.

Referring to claim 5, Chua discloses the applicant's invention as claimed with the exception of providing a piston that is housed in a valve body.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that is housed in a valve body (see figures 6-8). Therefore it would be obvious to modify Chua's invention by providing a piston that is housed in a valve body in order to have a better control of fluid flow.

Referring to claim 6, Chua discloses the applicant's invention as claimed with the exception of providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask.

Servidio discloses a pressure support ventilatory assist system that does provide a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask (referring to figures 6 through 8; number 160 represents the piston and the section located at the distal end of the piston and close to passage way represents the seat pad; and the section located at number 70 represents the valve seat). Therefore it would be obvious to modify Chua's invention by providing a piston that comprises a seat pad which cooperates with a valve seat to control the flow of air from the mask in order to prevent air from being trapped in the mask.

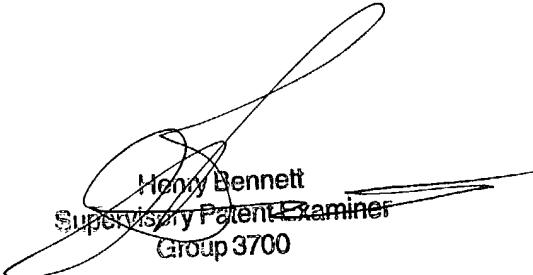
***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP  
October 1<sup>st</sup>, 2004

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700